

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES

v

MANNING, Bradley E., PFC
U.S. Army, (b) (6)
Headquarters and Headquarters Company,
U.S. Army Garrison, Joint Base Myer-
Henderson Hall, Fort Myer, VA 22211

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)
) **RULING: FBI IMPACT**
) **STATEMENT -**
) **MRE 505(g)(2)**
) **SUBSTITUTION**

) DATED: 19 July 2012
)

The Government filed an *ex parte* motion for *in camera* review by the Court IAW MRE 505(g)(2) to determine whether limited voluntary disclosure by a proposed Government substitution for the classified FBI Impact Statement shall be disclosed to the Defense or whether disclosure of the classified information itself is necessary to enable the accused to prepare for trial. The Government prepared a redacted filing for the Defense. Defense avers the FBI Impact statement should be discoverable under *Brady*, RCM 701(a)(6), and is material to the preparation of the defense to the extent relevant and necessary for production under RCM 703(f).

The Court has conducted an *in camera* review of the classified information considering the factors requested by the Defense in its 6 July 2012 submission.

- a) What is the extent of the redactions/substitutions?
- b) Has the Government narrowly tailored the substitutions to protect a Governmental interest that has been clearly and specifically articulated?
- c) Does the substitution provide the Defense with the ability to follow-up on leads that the original document would have provided?
- d) Do the substitutions accurately capture the information within the original document?
- e) Is the classified evidence necessary to rebut an element of the 22 charged offenses, bearing in mind the Government's very broad reading of many of these offenses?
- f) Does the summary strip away the Defense's ability to accurately portray the nature of the charged leaks?
- g) Do the substitutions prevent the Defense from fully examining witnesses?
- h) Do the substitutions prevent the Defense from exploring all viable avenues for impeachment?
- i) Does the Government intend to use any of the information from the damage assessments? If so, is this information limited to the summarized document provided by the Government? If the information intended to be used by the Government is not limited to the summarized document, does the Defense in fairness need to receive the classified portions of the documents to put the Government's evidence in proper context?
- j) Does the original classified evidence present a more compelling sentencing case than the proposed substitutions by the Government?
- k) Do the proposed substitutions prevent the Defense from learning names of potential witnesses?
- l) Do the substitutions make sense, such that the Defense will be able to understand the context?
- m) Is the original classified evidence necessary to help the Defense in formulating defense strategy and making important litigation decisions in the case?

- n) Is it unfair that the Government had access to the unclassified version of the damage assessment and the Defense did not? Does that provide a tactical advantage to the Government?

The Government substitute is a redacted version of the original that discloses *Brady* and RCM 701(a)(6) material.

The Government has advised the Court that nothing in the FBI Impact Statement that has not been disclosed to the Defense will be used by the Government or by any Government witness during any portion of the trial. As such, the remainder of the FBI Impact Statement is not material to the preparation of the defense or relevant and necessary for production under RCM 703(f).

The FBI Impact Statement substitution meets the Government's discovery obligations under *Brady* and RCM 701(a)(6) to disclose evidence tending to reasonably negate the guilt of the accused to an offense charged, reduce the degree of guilt to an offense charged, or reduce the punishment.

The Government is ordered that no portion of the FBI Impact Statement not disclosed to the Defense will be used by the Government or any Government witness during any portion of the trial. This includes rebuttal, rule of completeness, and sentencing if Defense introduces or references anything in the substitution.

The substitution is sufficient for the Defense to adequately prepare for trial and represents an appropriate balance between the right of the Defense to discovery and the protection of specific national security information.

RULING: The Classified motion by the Government to voluntarily provide limited disclosure under MRE 505(g)(2) for the FBI Impact Statement is **GRANTED**.

Ordered this 19th day of July 2012.



DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit